

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of

Toll Free Service Access Codes

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CC Docket No. 95-155

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COMMENTS OF TIME WARNER COMMUNICATIONS HOLDINGS, INC.

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COMMENTS OF TIME WARNER COMMUNICATIONS HOLDINGS, INC.

I. INTRODUCTION

Time Warner Communications Holding, Inc. ("TW Comm"), a wholly-owned subsidiary of the Time Warner Entertainment Company, L.P., hereby files its comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding ("NPRM"). TW Comm is an emerging facilities-based provider of residential services that offers services in Rochester, New York, and will soon be expanding such service offerings to portions of New York City. TW Comm is also authorized to provide local exchange services in Ohio and Tennessee and plans to seek comparable authority in other states supporting local competition. In addition to these accomplishments, TW Comm is contemplating becoming a Responsible Organization ("RespOrg"). Thus, the following comments specifically address concerns that may inherently affect emerging competitive local exchange carriers ("CLEC"), such as TW Comm, that wish to enter the toll free service market.

II. EFFICIENT USE OF TOLL FREE NUMBERS

A. Toll Free Numbers Should be Allocated to Subscribers Who Want Them

In order to further the Federal Communications Commission's ("Commission") goal of ensuring efficient, fair and orderly allocation of toll free numbers, RespOrgs must not allocate a toll free number until an affirmative request has been made by a customer. To do otherwise will only perpetuate the rapid depletion of available toll free numbers. The practice of allocating numbers to customers who never request an assignment is an inefficient allocation of a scarce resource that could easily result in the warehousing of valuable toll free numbers. Allocating numbers without an affirmative request provides a competitive advantage to service providers by allowing them to have a pre-selected pool of desirable numbers to offer their customers while precluding other service providers from using these numbers.

Affirmative requests should be kept on file with the RespOrg or 800 Service Provider for purposes of auditing future distribution of toll free numbers. Moreover, such records should be maintained until the number has been disconnected, regardless if the time exceeds two years as proposed by the Commission. This will allow for continual monitoring of the "aging" process of toll free numbers.

B. Escrow Requirements May Not Discourage Warehousing

In an effort to discourage warehousing, the NPRM suggests that RespOrgs, 800 Service Providers and third party agents be required to pay a deposit into an escrow account for each toll

free number held in reserved status. In theory, the NPRM's proposal is commendable; however, in reality it may result in market disparity. A \$.70 cent per month charge is already paid by RespOrgs as soon as a number is reserved. Those companies that have the capability to warehouse numbers are also able to absorb the existing charges and would most likely have the resources to absorb additional charges imposed by the Commission. Smaller RespOrgs, however, would be adversely affected by having to pay an additional charge without the ability to absorb the cost. Requiring an affirmative request from a customer before allocating a toll free number would provide more of an incentive to discourage warehousing than an escrow requirement.

C. Lag Time

The guidelines currently in place allow for excessive lag time between the reservation of a number and the time it is put into use. Reducing the amount of time a toll free number can remain in reserved status from 60 days to 45 or 30 days would quickly return numbers to the available pool, thus allowing for more efficient use of valuable numbering resources. The shorter time frame allows ample time to change numbers from reserved to working status, especially if numbers are only being reserved when a firm commitment has been made by a customer. In addition, reducing the assigned but not working status of numbers from 12 to 4 months will facilitate a more efficient use of toll free numbers by ensuring that new customers have the largest possible choice of number assignments.

The Commission should not, however, reduce the six month aging period to four months. The purpose of the lag time between

disconnection or cancellation of a toll free number and the point at which that toll free number can be reassigned to another customer is to prevent excessive misdialing by a misinformed toll free caller who is unaware that the number has been allocated to a new subscriber. Excessive misdialing can result in unnecessary expenses for the new toll free subscriber. Although the reduction in lag time will provide for greater recycling of toll free numbers, the safeguards that a six month aging period provides substantially outweigh the benefits of a two month reduction. Such extreme measures should only be necessary when the number supply is in immediate danger of being exhausted.

TW Comm does not support reducing the aging for suspended but not activated numbers from 12 to 4 months. Customers who wish to use the same number on a seasonal basis, reuse the same advertising from year to year or suspend the number during the off season, may be at a disadvantage.

D. Personal Identification Numbers

The NPRM recognizes certain advantages and disadvantages to using a personal identification number ("PIN") in conjunction with the use of toll free numbers. However, there is currently not enough data to substantiate additional regulations either supporting or discouraging the use of PINs. Once the Commission obtains information demonstrating that additional regulations provide more efficient utilization of toll free numbers, it should revisit this issue. As it now stands, there is no evidence to indicate that the use of PINs is efficient in limiting the growth of 800 numbers.

III. MECHANICS OF OPENING NEW TOLL FREE CODES

A. Reservation of New Toll Free Codes

Toll free number reservation should be based on a "first come, first served" basis. However, in the event a particular number is requested by more than one party, a form of dispute resolution should be undertaken. To ensure fairness, a RespOrg or 800 provider must prove that an affirmative request has been made by a real customer. In instances where dispute resolution is unsuccessful, a lottery system may be effective in assigning the number provided an affirmative request can be proven by each side.

B. Implementation Plan for Next Toll Free Code Beyond 888

Implementation plans for the deployment of a new code should begin when the last code has 50% of the numbers in use and the existing 800 code has maintained a high level of assignment.¹ Any implementation plan chosen by the Commission must allow enough time to implement the new code without running out of numbers in the old code. The NANC is best suited to oversee the implementation of new toll free codes.

As the Commission has recognized, SMS/800 and SCP vendors will have modified their switches to accommodate the new 888 code as well as subsequent codes. Thus, there is no technical reason why a mandated implementation of a new toll free code on six months notice should not be implemented by the Commission.

The Commission is correct in proposing that Local Exchange Carriers ("LEC") upgrade their end office software to support

¹ A 50% utilization factor is currently being used for NPA purposes.

routing of new codes rather than routing calls through a tandem. Such an approach would result in more efficient use of trunking facilities and eliminate a negative impact of the exiting code being routed differently than the new.

IV. WAREHOUSING OF TOLL FREE NUMBERS

The amount of toll free numbers a RespOrg may reserve must be controlled in order to allow smaller companies to adequately and effectively compete. The current cap of 15% by itself is too small for some companies and gives larger companies the advantage of reserving large quantities of numbers. Conversely, a 1,000 number cap may provide a sufficient amount of numbers for some small companies while not providing enough for other companies that have a larger volume of business. Due to this disparate treatment, the Commission should consider placing an upper limit on the 15% cap thereby limiting the total amount of numbers that can be reserved by any given company. This upper limit should prohibit a company from reserving disproportionate shares of toll free numbers, thus ensuring fair treatment of all companies regardless of size.

Industry guidelines should discourage warehousing by requiring RespOrgs to submit accurate and verifiable customer information before a number is issued. The Commission should require that a written agreement be entered into by the RespOrg and the customer before a number is selected or reserved from the database, thereby substantiating the existence of a legitimate customer who has agreed to be billed for the service associated with each number. Guidelines should also include outlining a review process for submitted requests, tracking the use of

individual numbers and reducing the reservation period for each toll free number. The ability of the Commission to audit and track numbers would greatly assist in identifying possible instances of warehousing and fraudulent practices by RespOrgs. A RespOrg failing to meet these requirements would be addressed on an individual basis. If, however, warehousing were found to be deliberate, the RespOrg should be fined or de-certified depending on the severity of the violation.

V. VANITY NUMBERS

A. Right of First Refusal

Automatically assigning vanity numbers in the new codes when there is not a real need for a second number, other than trade protection, could conceivably result in rapid depletion of a new code. The NPRM's proposal to allow for a right of first refusal must be carefully examined, taking into consideration the current amount of allocated 800 vanity numbers and the amount of 888 numbers that might be reserved by these subscribers. If the numbers are significantly large, giving a subscriber the right of first refusal may not outweigh the threat of rapid and immediate consumption of newly-allocated codes.

If the Commission determines that a right of first refusal is appropriate, the subscriber must be required to establish a legitimate need for the second number before exercising its right. Subscribers should be permitted to exercise this right of first refusal free of charge. If a subscriber cannot support a need for the second number, the number should be released for assignment to other subscribers. The released number would be identified as an equivalent toll free number and could only be

allocated to a customer on a random basis when the service code nears exhaustion.

There may be other solutions available that provide similar trade protection without threatening the availability of numbers. For example, the Commission may consider identifying all existing vanity numbers in the 800 code and preventing the selection of those numbers as vanity numbers in the new codes. Thus, these numbers would be available only on a random basis thereby minimizing the chance of a competing company obtaining the same toll free number in the new code.

The NPRM suggested establishing SIC codes to allay concerns that a competing business may attempt to obtain a vanity number in a new toll free code that is equivalent to an 800 vanity number used by a competitor. However, this proposal could be administratively burdensome. Likewise, the administration of all other proposals must be given considerable attention.

VI. CONCLUSION

As described herein, TW Comm supports the Commission's efforts to promote the fair and equitable reservation and distribution of toll free numbers. The current lack of toll free numbers warrants careful consideration in implementing, allocating and monitoring the use of newly-allocated toll free codes.

Respectfully submitted,

**TIME WARNER COMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Yvonne M. Coviello, hereby certify that on this 1st day of November, a true copy of the foregoing Comments filed by Time Warner Communications Holdings, Inc., were Hand Delivered to each of the parties listed:

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